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# REPORT FROM THE CAPITAL

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## NewsMakers

◆ Andrew Black of Riverton, Wyo., has begun a fall internship at the Baptist Joint Committee, where he will work in the agency's news service. He studied history, journalism and world affairs at Baylor University in Waco, Texas, before graduating in 1997.

◆ Israeli Prime Minister Benjamin Netanyahu temporarily assumed the powers of his religious affairs adviser to implement a court ruling granting a woman from the Reform Judaism movement a seat on a council monopolized by Orthodox Jews. He took the power after his religious affairs minister, Eli Suissa, refused to implement the ruling.

◆ Bishop K. H. Ting, honorary president of the government-sanctioned China Christian Council, criticized the recent U.S. report detailing global Christian persecution. He said U.S. intervention would harm relationships between official religious groups and the government and would give Chinese Christians "the unenviable image of collaborating with the U.S. government."

◆ Charlotte, N.C., Mayor Pat McCrory reaffirmed his opposition to displaying the Ten Commandments in City Hall, according to a news report. McCrory said his personal religious beliefs lead him to "separate my politics from my faith." Δ

## Clinton unveils new guidelines for religious expression at work

President Bill Clinton issued detailed guidelines Aug. 14 clarifying what types of religious expression should be allowed in the federal workplace.

Under the guidelines, religious expression should be protected unless it would create the appearance of a governmental endorsement of religion or threaten the efficient work of the agency.

Clinton, joined by Vice President Al Gore and religious and civil liberties leaders, called the delicate balance protecting the free exercise of religion while prohibiting its establishment "the enduring genius of the First Amendment."

The guidelines instruct federal employers to avoid discriminating on the basis of religion and to reasonably accommodate employees' religious practices.

The guidelines also state that federal workers may engage in personal religious expression "to the greatest extent possible, consistent with workplace efficiency and the requirements of the law."

Gore said, "It is the very separation of church and state, the freedom from persecution, the absolute and unassailable choice of how to worship — it is that freedom that keeps religion strong."

Clinton drew on his own religious experience, saying: "I have been immeasurably enriched by the power of the Torah, the beauty of the Koran, the piercing insights of religions of East and South Asia and of our own Native Americans,

the joyful energy that I have felt in black and Pentecostal churches and, yes, even the probing questions of the skeptics. That is America at its best."

Religious leaders hailed the guidelines and applauded the Clinton administration's policies on religious freedom.

Rabbi David Saperstein, director of the Religious Action Center of Reform Judaism, said the Clinton administration "is the most supportive administration to religious

*"Religious freedom is at the heart of ... our journey to become truly one America."*

— PRESIDENT CLINTON



freedom and religious liberty of American citizens of any administration in the history of this nation. Time and again, they have stood up on behalf of the rights of religious people in the schools, on behalf of religious freedom generally and now within the federal workplace."

J. Brent Walker, Baptist Joint Committee general counsel, said the guidelines are helpful in heading off potential church-state conflicts. He said they do not create new laws, but give "religion the benefit of the doubt" in gray areas.

The guidelines apply only to federal employees, but Dwight Jessup, vice president of academic affairs at Taylor University (Ind.) and chairman of the BJC board, said state governments and the private sector should use them as a model.

Oliver S. Thomas, special counsel on religious liberty at the National Council of the Churches of Christ in the U.S.A., said the guidelines tell federal employers, "Don't be afraid of religion in the workplace." Δ

## Quoting

WHEREAS, the Supreme Court's decision to strike down the Religious Freedom Restoration Act is a blow not only to the sovereignty of the Congress but to religious freedom in the U.S.A.; and

WHEREAS, without the Religious Freedom Restoration Act, substantial burdens placed on religious exercise by state and local governments no longer will be subject to strict scrutiny (i.e., requirement that burdens placed on religion be necessary to accomplishment of a "compelling" governmental interest such as health or safety in the least restrictive fashion possible); and

WHEREAS, the Supreme Court's decision to strike down the Religious Freedom Restoration Act reminds African Americans of the actions of the Supreme Court who over a century ago issued the infamous Dred Scott decision; and

WHEREAS, 68 religious and 3 civil liberties groups worked with the members of Congress to draft and secure the passage of the Religious Freedom Restoration Act (RFRA);

THEREFORE BE IT RESOLVED, that the Progressive National Baptist Convention, Inc., will continue to inform its constituency of this disenfranchising act of the Supreme Court and demand new legislation.

— Resolution adopted August 6, 1997, by the Progressive National Baptist Convention, Inc.

## News & Comment ...

### Church, city compromise in building permit dispute

St. Peter Roman Catholic Church and the city of Boerne, Texas, recently reached an agreement in a dispute over the church's efforts to expand its sanctuary in the city's historic preservation district.

Lawyers said the agreement will be costly for the church.

The agreement was announced two months after the U.S. Supreme Court struck down a 1993 law church officials cited in their efforts to force the city to permit the expansion.

After the city refused a building permit for the proposed expansion, the church filed suit under the Religious Freedom Restoration Act, which required government to show a "compelling interest" to restrict religious practice. However, the Supreme Court struck down the law, bolstering the city's ability to enforce the preservation ordinance.

Douglas Laycock, who argued the church's case supporting RFRA before the Supreme Court, called the Aug. 12 settlement "terrible" and said the church "will be paying debts on this forever."

Laycock said, "Taking RFRA away has real consequences and this is an example. ... It has moved the bargaining leverage from the church to the city."

The agreement leaves details to be worked out by architects from both parties. The church must restore and preserve the original building "to the extent that it is reasonably visible from public streets of the city." The church will incur the costs of restoration, including restoration of the roof, the original stone, windows and other features.

The city will approve a design of the new sanctuary that will seat 100 more people than the church had originally planned. The city will also donate a portion of a street to the church for parking.

Laycock said, "This is going to divert huge amounts of money from religious to secular purposes." It shows that the city thinks its "tourist business is a lot more important than protecting religious exercise," he said.

Tom Drought, general counsel for the Archdiocese of San Antonio, represented the church in negotiations with the city. He called the compromise a "good agreement" but noted the church will incur substantial costs.

He blamed the dispute on the 1990

Supreme Court decision in *Employment Division v. Smith* that made it easier for government to justify laws that burden religious practices. That decision spurred the enactment of RFRA.

### Measure would protect workers' religious practice

A Senate bill ensuring greater accommodation for the religious practices of workers gained new momentum after President Clinton released guidelines to protect religious expression in the federal workplace.

A spokeswoman for Sen. John Kerry, D-Mass., sponsor of the Workplace Religious Freedom Act, said Clinton's actions will give lawmakers a better opportunity to highlight the issue of protecting workers' religious practices.

Proponents of the Senate measure, cosponsored by Sen. Dan Coats, R-Ind., said the workplace religious freedom measure is needed to eliminate discrimination against religious observances in the private and public sector.

"Though we know that only a small minority of employers refuse to make reasonable accommodations for employees to observe the Sabbath or other holy days, the fact of the matter is that no worker in America should be forced to choose between a job and deeply held religious beliefs," said Coats.

"The best and oldest tradition of America is religious accommodation without coercion," he said.

The proposal would require employers to accommodate employees' religious observances except in cases causing "significant difficulty or expense." The exception is modeled after language used in the Americans with Disabilities Act.

Religious liberty advocates say U.S. Supreme Court rulings have watered down existing laws designed to require employers to accommodate the religious needs of workers.

A spokesman said Rep. Jerrold Nadler, D-N.Y., who introduced the bill in the previous Congress, plans to reintroduce the bill in the House this fall.

The act is supported by several religious groups, including the American Jewish Committee, Baptist Joint Committee, Christian Legal Society, National Association of Evangelicals and the National Council of the Churches of Christ in the U.S.A. Δ

# Church-State Intersection

*Melissa Rogers*

Associate General Counsel



Within hours of the release of the president's guidelines on religion in the federal workplace, a few critics from the left and

right had taken to the airwaves. Here's why their criticism is misplaced.

Critics on the left charge that the guidelines are an open invitation to overly zealous Christian employees to push religion in the federal workplace. But the guidelines do not give such employees new rights to overreach. Instead, the guidelines stress both sides of the constitutional coin — no unnecessary interference with individual religious practice and no government-endorsed religion or religious harassment. Indeed, the guidelines provide the first formal guidance of any kind on what constitutes religious harassment in the federal workplace.

Thus, while the guidelines will clear up some confusion about perfectly permissible religious expression that had been squelched, they will also give some supervisors the support they need to stop religious harassment or government-endorsed religion. Moreover, the guidelines will be a great boon to non-Christian federal workers who have been denied their rights simply because their beliefs, clothing or articles of faith are unfamiliar.

A more specific charge made by critics on the left is that the guidelines will allow religious symbols to be placed in workspace open to the public in ways that appear to create government-endorsed religion. But the guidelines mainly address employees' religious expression in places where there is not regular exposure to the public and emphasize that there must be special sensitivity to church-state separation concerns in workspace accessible to the public.

The guidelines do provide that, even in places accessible to the public, not all religious expression by employees is pro-

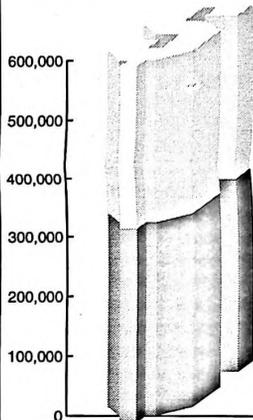
hibited. But here the guidelines just apply common sense. The guidelines explain that, in such work areas, the wearing of religious jewelry by employees is generally permissible, as are discussions about religion among willing co-workers during private time if the public would understand it as merely conversation rather than government policy. Furthermore, even if an employee's office is accessible to the public, he or she could still display a drawing of Jesus, for example, so long as secular art of the same size also is permitted and if it would be obvious that such art is the employee's expression, not the government's.

Interestingly, it is likely that critics on the left ultimately will be thankful for the guidelines. By clarifying the law, the guidelines will greatly undermine attempts to amend the First Amendment.

Critics on the right claim that the guidelines give employers too much discretion over religious practice. But there is no way to avoid employer discretion in the interpretation of workplace policy, either with or without guidelines. Employers have to make judgment calls, sometimes very tough ones, and that will not change. Now at least employers will have some guidance and folks to call for more detailed advice.

Are the guidelines perfect? No, they sacrifice the "perfect" product any one group would create for something a bit messier, but better — a consensus document supported by a coalition of diverse religious and civil liberties groups. Will the guidelines solve every problem? Of course not — no human document could. But the guidelines do use the power of the "bully pulpit" to remind us of our nation's commitment to religious freedom and church-state separation. And, by reintroducing common sense to an area so often devoid of it, the guidelines help to create a workplace that is not only efficient and civil, but also respectful of individual liberties. Δ

## Endowing the Baptist Joint Committee



### Let's finish the job —

Gifts and pledges to the Baptist Joint Committee's \$600,000 endowment drive recently reached the **\$324,500** mark.

Early in the drive, a retired Baptist minister pledged to give \$100 monthly until the goal is reached. His commitment to religious liberty and regular gifts challenge us to reach the goal ... sooner, rather than later.

# Separation protects faith

## Baptist Joint Committee

### Supporting Bodies

- ◆ Alliance of Baptists
- ◆ American Baptist Churches in the U.S.A.
- ◆ Baptist General Conference
- ◆ Cooperative Baptist Fellowship
- ◆ National Baptist Convention of America
- ◆ National Baptist Convention U.S.A. Inc.
- ◆ National Missionary Baptist Convention
- ◆ North American Baptist Conference
- ◆ Progressive National Baptist Convention Inc.
- ◆ Religious Liberty Council
- ◆ Seventh Day Baptist General Conference
- ◆ Southern Baptist state conventions/churches

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**M**ore than 160 years ago, when the legendary Alexis de Tocqueville

came to our shores, one of the things ... that struck him was, and I quote, our "religious atmosphere" — a sense of faith and purpose that infused almost every aspect of American life. And it really struck him so deeply that he inquired especially into the meaning and roots of this phenomenon. In talking to people of faith and others as well and talking especially with members of the clergy, he reached a simple and unmistakable conclusion. And again I quote: "The main reason for the quiet way of religion over this country was the complete separation of church and state. I met nobody, lay or cleric, who did not agree about that." He was a pretty insightful observer way back then.

... America's identity is much more than the sum of our religious traditions. But those traditions, Christian — both Catholic and Protestant — Jewish, Muslim, Hindu and others have made a profound contribution to the values we share as Americans — values that guide and inspire us even as we chase our most secular goals. That is the basic challenge for government in addressing issues of religious freedom. It is the very separation of church and state, the freedom from persecution, the absolute and unassailable choice of how to worship — it is that freedom that keeps religion strong.

... You can do public opinion polls in countries around the world today, and they show that, now, the United States is by far the most religiously observant nation in the world. And yet still people



*Vice President*  
**Al Gore**

say the reason is, as de Tocqueville said, because people come to it of their own accord, their own free

will — because separation is the principle upon which that faith is protected. And it is our religious values held by individuals and nourished by their organized faiths that help to keep our nation strong. And that's why we have to do more to protect and advance religious freedom — to strengthen the right of individuals to follow the dictates of conscience without weakening the Constitution. That's a commitment that President Clinton has held since the day he took office. I will never forget the day that he signed the Religious Freedom Restoration Act nearly four years ago.

... While we were very disappointed that the Supreme Court overturned part of that legislation later on, nevertheless, the momentum created by that legislation and even more importantly, the momentum created by that consensus that formed in support of the legislation, can bring a new respect for religious freedom to state and local governments all across the United States of America.

... Now I know some ... were worried when (Clinton) broke with tradition and formed an all-Southern Baptist ticket back in 1992, but he's worked extremely hard. Because he knows that while government must never interfere with the way people worship, government can make it easier for people to exercise their freedom of religion. And by doing so we strengthen not just our private and spiritual lives, but our public lives as well. Δ

*Excerpts of remarks by Vice President Gore at the Aug. 14 introduction of federal guidelines protecting religion in the workplace*



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